

# Channel 4 response to the review of the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting

## Introduction and overview

Channel 4 welcomes the opportunity to respond to the Commission's review of the Communication on the application of state aid rules to public service broadcasting ('the Communication'). As broadcasters across Europe experience dramatic changes in light of the transition to digital media, this presents a timely opportunity to re-examine the public service broadcasting environment and, in particular, issues raised in relation to the funding of public service broadcasters.

The UK benefits from a plural and healthy public service broadcasting sector. Over many decades UK audiences have come to expect public service broadcasting from a range of different and competing providers. The UK has traditionally enjoyed strong plurality of supply, rather than public service broadcasting from a single provider. In the UK the BBC forms the cornerstone of the public service broadcasting ecology, receiving its income predominantly from a levy on every member of the public in ownership of television receiving equipment. Channel 4, which was launched in 1982, was established with a clear public service mission to provide an alternative public service offering to the BBC and to fulfil a specific remit largely focused on innovation, creativity and diversity – providing programming catering for minority interests otherwise not well served by the mainstream public service broadcasters. In the UK public service broadcasting is also provided – although to a lesser extent – by the commercial providers ITV and Five.

The structure and funding of the UK's public broadcasting system is unique in Europe, and indeed the world. While the BBC is principally funded through the licence fee<sup>1</sup>, Channel 4, ITV and Five are funded by commercial means, predominantly through advertising and sponsorship, as well as other commercial ventures such as international programme sales and merchandising. Channel 4 is unique in being a commercially funded, but publicly owned corporation. Any profits are retained by the corporation to reinvest in ongoing activities: Channel 4's primary purpose is to maximise its public service activities. ITV is a publicly listed company and Five is predominantly owned by RTL and therefore they both have a duty to shareholders as well as to the delivery of public service objectives.

Channel 4's remit is set out in UK legislation in the Communications Act 2003 says

“the public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular –

- (a) demonstrates innovation, experiment and creativity in the form and content of programmes;
- (b) appeals to the tastes and interests of a culturally diverse society;

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<sup>1</sup> The BBC also receives funding through its commercial arm BBC Worldwide

- (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
- (d) exhibits a distinctive character.”<sup>2</sup>

These commitments are more detailed and demanding than those imposed on the UK’s other commercial public service broadcasters and apply more widely across the whole of Channel 4’s output on its main channel, rather than narrowly to specific programme genres. By contrast, ITV and Five’s overarching public service remit in legislation is much less specific, simply: “the provision of a range of high quality and diverse programming”.<sup>3</sup>

The Channel 4 remit established in the Communications Act is defined in further detail in Channel 4’s licence to broadcast granted by the national regulator, Ofcom. This includes the obligation for Channel 4 to be freely available to as many people as possible in the United Kingdom (98.5%), as well as a number of annual programming and production obligations, including:

- News programmes at lunchtimes and evenings every week day and on weekends, including 208 hours of news in peak times
- 208 hours of current affairs (80 hours in peak time)
- 330 hours of education
- 25% of programming to be independently produced
- 30% of programming to be commissioned from outside London

In addition, Channel 4 (in line with all UK public service broadcasters) must produce an annual ‘Statement of Programme Policy’ indicating (among other things) how Channel 4 proposes to fulfil its remit in accordance with guidance issued by Ofcom; a further retrospective review is required setting out how Channel 4 met the terms of its remit and licence in the previous year.

Alongside its core public service channel, Channel 4 operates a number of commercial activities. These include a number of digital television channels, which now include E4/E4+1, More 4/More4+1, Film4/Film4+1, Channel 4+1 and an HD version of C4 on Sky. In new media, Channel 4 operates 4OD, an on-demand catch up service and channel4.com, which provides extensive programme-related material and stand-alone online content. Later this year, Channel 4 is also planning to launch of its first wholly-owned digital radio services.

Because Channel 4 is publicly owned and hence does not have to maximise profit for shareholders, the purpose of these commercial activities is purely to supplement Channel 4’s provision of its core public service channel and to raise additional revenue that can be reinvested in the fulfilment of core public service activities. The Communications Act<sup>4</sup> states that Channel 4 can only carry out activities that are conducive to delivery of its core public service remit. In addition, whilst currently not defined as public service activities in legislation, many of these services make a strong public service contribution. For example digital channel More 4 broadcasts a daily news programme, which has a particular emphasis on international news as well as regular current

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<sup>2</sup> S 265(3) Communications Act 2003

<sup>3</sup> S265 Communications Act 2003

<sup>4</sup> S 199, Communications Act 2003

affairs and factual programmes. Online, Channel 4 makes available a full range of programming from the main channel on demand, thereby extending the reach and availability of many core public service programmes. Moreover, as part of its educational remit Channel 4 also provides a range of content and programme related material of a strong public service nature. Examples include: online educational material; initiatives like Picture This, which encouraged amateur photographers to submit pictures online; and an online game developed around a drama-documentary on the main channel called City of Vice, centred around historical facts about 18<sup>th</sup> Century London.

As part of Channel 4's future thinking about its role and purposes in the context of public policy discussions in the UK, we will be looking at how public value can be increasingly delivered across a range of platforms, as well as on linear channels. Channel 4 believes it continues to have an important social, democratic and cultural role to play as a public service broadcaster. Indeed, as citizens and consumers are faced with increasing choice, the role of trusted, impartial providers of quality original content is arguably even more important than ever. Furthermore, Channel 4 also believes that it remains important that the public should continue to have a plurality of providers available to them, with Channel 4 providing the main source of public service competition to the publicly funded BBC. Channel 4 has recently published a document entitled 'Next on 4' in which we set out our thinking, based on extensive consultation, on where our future purposes lie. This document can be accessed at [http://www.channel4.com/about4/next\\_on4.html](http://www.channel4.com/about4/next_on4.html). This document argues that as the transition to digital takes place Channel 4 needs to become a multi-media organisation if it is to remain fit for purpose and to fulfil its public service objectives in a digital world.

However, as this document also makes clear, there are a number of significant challenges to achieving these ambitions. As in the rest of Europe, the UK media landscape is changing very rapidly. Audiences are increasingly devoting their time to accessing material online, and broadband is now available in [over 50%] of UK homes. Digital television has one of the highest penetration rates in Europe, available in some 80% of homes. The digital switchover process is now underway and is due for completion in 2012.

In light of these changes, Channel 4 believes there is both a threat and opportunity for established public service broadcasters. The fragmentation in media consumption puts severe pressure on Channel 4's largely advertising funded business model. Channel 4 has set out its own views that the organisation will face an emerging funding gap of around £100m as we approach switchover, and a recent independent study by Ofcom from consultants LEK confirmed the financial pressures Channel 4 is likely to experience. If Channel 4 is to maintain its core public service role, careful consideration needs to be given to Channel 4's future priorities and possible new forms of support of its model, though Channel 4 envisages that it will continue to rely predominantly on commercial revenues. Channel 4 remains open-minded about the form that any support may take, but this debate will need to take place as a matter of some priority, given the rapid rate of change taking place in the media sector.

In public policy terms, the UK Government has set up a 'Convergence Think Tank' to look at the public policy implications of the converging media world. Communications regulator Ofcom is also about to begin its second review of public service broadcasting. Channel 4 looks forward to playing a central role in these debates. The Commission's work to look at the Communication on

the application of State Aid Rules to Public Service Broadcasting also raises a number of important issues in relation to the future delivery of public service broadcasting. Channel 4 believes that any revision of the Communication should take into account shifting consumption patterns of converged media, whilst also recognising the complex range of different public service broadcasting systems in operation across Europe to ensure that sufficient flexibility exists for each Member State to respond to the characteristics and demands of its audience.

Having set out the context of the UK's public service broadcasting system and the increasing complex climate in which Channel 4 operates, this response will now turn to the elements of the Commission's questionnaire which have most direct relevance to Channel 4.

## **GENERAL**

### Questions 1.1 – 1.3

The new Audiovisual Media Services Directive recognises the changing nature of the media and the increasing availability and use of online platforms. In light of these changes, Channel 4 is planning to enhance its online presence through a number of new and innovative services, including in areas such as arts and education. While such services do not currently fall within Channel 4's broadcasting licence issued by Ofcom, Channel 4 believes that they offer genuine public value. As such, Channel 4 believes it is important that the Broadcasting Communication recognises clearly that non-linear services can be included alongside traditional linear services within the scope of public service broadcasting, where they display appropriate public service characteristics as defined by the Member State.

Channel 4 also believes that the Communication needs to retain flexibility for each Member State to decide how the public service mission is best delivered. Each Member State serves differing audience needs and to date the derogation of the definition of public service broadcasting has served the public well. This principle should be maintained at the heart of any revised Communication.

In terms of the broadcasting sector in the UK, there has been a long tradition of relatively healthy competition between the public and commercial sector and between public service providers. The UK system currently enjoys strong competition between the publicly owned and largely commercially financed BBC and Channel 4 and ITV and Five (commercially financed but with some public service obligations). In addition, since the launch of satellite television in the late 1990s, there has been additional robust competition from commercial cable and satellite channels. Competition is also increasingly coming from emergent online audiovisual content providers, in terms of taking more and more of the audience time and, in turn, revenue. Many of these are now huge international companies in their own right. However, while digital channels and platforms compete for audience and revenue, they tend not to offer much in terms of investment in originally produced content offering clear public value. Many core areas of public service content – news, current affairs, arts and education for example – remain in demand from the public but face increasing pressure to remain sustainable commercially. As policy makers look ahead to future decisions regarding public service broadcasting, it is important that the distinctive and valuable role of those organizations that deliver public value are taken into account, and that the policy

framework acts to stimulate a plurality of public service supply. While television is likely to remain the core of public service broadcasting in at least the medium term (Channel 4 for example continues to reach around 80% of the UK public every week and together the UK PSBs reach almost everyone in the UK every week), it will increasingly be complemented by new media services, which offer the opportunity to deliver services of public value in their own right in a digital media world.

## **COMPATIBILITY ASSESSMENT UNDER ARTICLE 86 (2) EC TREATY, IN COMBINATION WITH THE BROADCASTING COMMUNICATION**

### **2.1. Coherence with the Commission Decision and Framework on public service compensation**

#### Question 2.1.1 – 2.1.2

There are a number of elements contained in the Framework Directive that are not included in the Broadcasting Communication, such as the elements concerning the invitation to Member States to define the public service remit and the rules governing compensation and over-compensation.

Historically, Channel 4 has operated under a unique model. The core public service channel - Channel 4 - has always been funded commercially, largely through advertising and sponsorship and has also been permitted to operate a number of commercial activities to support the core public service channel. Any commercial surplus has been directed at reinvestment in public service activities rather than in delivering a return to shareholders.

As new or revised public service models evolve for the digital world, Channel 4 believes that in principle the approach in the Commission Decision and Framework on public service compensation is appropriate, where such revenue/profit is ultimately directed towards the maintenance of public service activities. Indeed, in an increasingly competitive world, Channel 4 believes that this approach might provide security of funding and help promote innovation in public service content.

### **2.2. Definition of the public service remit**

#### Question 2.2.1

The UK's broad definition of public service is enshrined in the Communications Act 2003. This includes, for example, the requirement that public service broadcasting taken together will appeal to a wide range of people and cater for a range of interests, will be freely and universally available, and will be balanced and of high quality.

For commercially funded public service broadcasters, this overarching definition is reflected in a set of purposes established by the UK's communications regulator Ofcom:

- To inform ourselves and others and to increase our understanding of the world through news, information and analysis of current events and ideas.

- To stimulate our interest in and knowledge of arts, science, history and other topics through content that is accessible and can encourage informal learning.
- To reflect and strengthen our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences.
- To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere.

These purposes are further supported by a set of PSB characteristics that PSB providers are required to display: high quality, original, innovative, challenging, engaging and widely available. Beyond this, public service broadcasters are held to a set of obligations as set out in licences to broadcast (see above). Channel 4 has further identified a set of purposes that reflect its unique public service contribution as set out in the *Next on 4* document. These are focused around diversity, supporting new talent, challenging people to see the world differently and inspiring change in people's lives. While these purposes reflect the legislation and Ofcom's purposes, Channel 4 is looking to ensure these purposes are reflected right across its range of activities, not just the core channel.

The BBC is defined somewhat differently, with a set of purposes that closely mirror the Ofcom purposes set out in its Charter and Agreement. Each of its activities has a Service Licence which sets out in more detail the remit for each of its services.

### Question 2.2.2

Channel 4 does not believe that there is a need to further clarify the distinction between public service and other activities. In the UK context it is important to recognise the UK's strong heritage of commercially funded public service broadcasting. A preferable approach is to identify positively those services that are part of the public service remit, defined against fulfilment of key public service objectives against a set of clear criteria, rather than a negative exclusion of certain activities on the basis of their provision through commercial funding.

Channel 4 also believes that it is important for Member States to retain control over the detail of the definition and regulation of public service broadcasting. In the UK, for example, the important role of commercial activities that are not public service per se but that contribute to the overall delivery of public service provision is recognised by the UK Government, such as the contribution of Channel 4's commercial activities in helping to support the core public service channel. Flexibility to adapt the public service model according to the characteristics of each Member State is therefore important.

### Question 2.2.3

Channel 4 notes that Section 34 of the Communication says:

“...the public service remit might include certain services that are not programmes in the traditional sense, such as on-line information services, to the extent that while taking into

account the development and diversification of activities in the digital age, they are addressing the same democratic, social and cultural needs of the society in question

To date in the UK, the commercial public service model has not explicitly recognised non-linear services as being a core part of the PSB remit. The Communications Act makes no reference to the internet in the context of public service provision and as such it is not reflected in the public service definition established by Ofcom or in commercial PSB licences. By contrast, in the case of the BBC, online services are now explicitly included within the BBC's Charter and Agreement as a part of the Corporation's remit<sup>5</sup>. The BBC's online service also its own Service Licence.

However, policy discussions in the UK around the future provision of public service broadcasting have increasingly focused on the role that non-linear, digital media services can play in future in the public service mix. In its last PSB Review (2004/05) Ofcom opened a debate about the concept of a public service publisher (PSP) with a view to exploring the delivery of public service content through a new online institution. The UK Government's Convergence Think Tank is currently also seeking to further thinking about the opportunities of convergence which is likely to cover public service content provision. The theme will also be picked up in Ofcom's second review of public service broadcasting, due to begin in April. Channel 4's own thinking in *Next on 4* also sets out a number of ways in which non-linear services can play an important and complementary role in extending Channel 4's public service remit in the digital age. In particular, new media services can be expected to fulfil an important purpose in reaching those consumers who might otherwise be disenfranchised from public service content on traditional media (such as younger people and ethnic minorities).

The terminology used in the Amsterdam Protocol and reflected in the Communication – namely to talk in terms of 'online information services' - risks taking an overly narrow view of the opportunities afforded by non-linear services. To date much of the non-linear activity that might be considered to embody public service values has tended to be information and text heavy due to the relative limitations of digital media. However, Channel 4 believes it is now important to take a broader view of the nature of services that can be offered through non-linear services, for example through specially commissioned programming/content, online interactive fora and public engagement through initiatives such as Channel 4's *Big Art Mob* (where the public was invited to inspire and create pieces of public art across the UK) or the *Picture This* initiative described above. As such, the Communication should be broad enough to enable a wide range of linear and non-linear services to be reflected in Member States' definitions of public service broadcasting as long as they embody the values traditionally associated with public service content – such as the reflecting of democratic, social and cultural values of the society in question. In the UK, Channel 4 would anticipate that its non-linear public service activities would fulfil the broad public service objectives as outlined through the UK's policy and regulatory framework, supported by Channel 4's own public purposes.

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<sup>5</sup> BBC Charter section 5: "The BBC's main activities should be the promotion of its Public Purposes through the provision of output which consists of information, education and entertainment, supplied by means of— (a) television, radio and online services"

### Questions 2.2.4 – 2.2.5

Channel 4 is not aware of any evidence to suggest that the general approach adopted by the Commission has not been appropriate. Channel 4 does not have any particular view on whether this approach should be incorporated into the Communication.

Given the specific nature and characteristics of public service broadcasting across Member States, as described above, Channel 4 believes that it remains more appropriate for Member States to be responsible for determining the scope and evaluation of the public service remit. Rather than a homogenous set of rigid criteria, flexibility at Member State level would be welcome and help to ensure that the Communication remains fit for purpose in years to come, even as the broadcasting sector undergoes further, and unpredictable, change.

### Question 2.2.6

As described above, there are a number of new ways in which public service broadcasters can seek to fulfil their public service remit. In Channel 4's case, we envisage that this might include the delivery of public service content across digital linear channels, as well as through online services, such as in the areas of education and the arts described earlier.

Insofar as such activities meet public service criteria, as defined at Member State level, Channel 4 believes that a broad approach should be adopted in relation to those services that should be subject to ex-ante evaluation. Not least, recent experience demonstrates how rapid and unpredictable changes in the market are likely to be. It is therefore important not to be overly prescriptive and to rule out platforms or services that may ultimately prove valuable means of delivering public service content.

### Questions 2.2.7 – 2.2.8

Channel 4 believes that the detail of the evaluation of the public service remit should be left to Member States (see also answer to 2.2.5 above).

## **2.3. Entrustment and Supervision**

### Question 2.3.1

As a commercially funded public service broadcaster, Channel 4 has no direct experience of how entrustment procedures operate as applied to public service broadcasters funded solely (or at least almost entirely) by public money.

In terms of its own activities, as described above Channel 4 is subject to the terms of its public service broadcasting licence. Channel 4 is also required to publish an annual statement of programme policy and review its previous year's performance against its public service objectives. Within the context of the legislative and regulatory framework, the broadcaster is responsible for setting out the statement and review. In addition, Ofcom is required at least every five years to conduct a public service review, to assess the necessary level of regulatory intervention in the market in terms of the scope and scale of public service broadcasting.

From 2009, Channel 4 is also planning to add an additional level of accountability, through the publishing of a public value assessment, looking at the public value delivered across the full range of its activities, for example taking into account audience appreciation and off-screen activity around talent and diversity.

#### Question 2.3.2

In terms of the commercial public service broadcasters, Ofcom has powers to supervise and regulate public service provision, through the mechanisms outlined above. This combines regulatory powers concerning programme standards, enshrined in the Broadcasting Code, and the self-regulatory model of the annual statements of programme policy. In terms of complaints under the Broadcasting Code (which applies to all broadcasters, public service and purely commercial), broadcasters act as the first port of call in the handling of complaints; if a resolution cannot be reached the matter can then be referred to Ofcom. If Ofcom finds any licensee to be in breach of the Code or its licence the findings are published in full in public and, where necessary, sanctions will be issued, either in the form of a financial penalty or in extreme cases, licence revocation.

In the case of the BBC, the BBC Trust is largely responsible for supervising the BBC's performance and responding to complaints; some basic editorial standards responsibility, for example with regard to fairness and accuracy, reside with Ofcom. In addition, BBC proposals for the launch of new publicly funded services are now subject to a Public Value Test, which takes into account the likely value to the public together with the expected impact on the wider market. This new system has provided welcome additional scrutiny and more transparency into the process to launch new services using public funds. The views of third parties may be addressed to the Trust, both in terms of non-compliance with the BBC's regulatory framework, or to make views known as part of the Public Value Test.

In Channel 4's experience, the UK system operates reasonably effectively. There is a strong disincentive to breach the regulations, enforced through the potential for severe penalty, coupled with sufficient flexibility for public service broadcasters to have broad editorial freedom that ultimately works in the favour of the audience.

#### Questions 2.3.3 – 2.3.4

Channel 4 believes that the detail of the supervision and regulatory arrangements of public service broadcasting should be dealt with at Member State level, given the distinct characteristics of each Member State. Any move to prescribe arrangements in any more detail would risk undermining those established and well-functioning arrangements that are already in place.

#### Question 2.3.5

In the UK, there is scope for private organisations to raise complaints related to the scope of public service broadcasters' activities, either through general competition law or in relation to the scope of activities under the broadcast licence or, in the case of the BBC its Charter and Service Licences. Channel 4 sees no reason why additional arrangements are required at either European or national level.

## **2.4. Dual Funding of public service broadcasters**

### Questions 2.4.1 – 2.4.2

The state financing of pay television services is not a live issue in the UK, particularly given the long established principle of public service activity being free at the point of use to all consumers. Channel 4 therefore has no comment to make on this question.

## **2.5. Transparency requirements**

### Questions 2.5.1 – 2.5.4 .

As described above, the UK enjoys public service broadcasting from more than one provider. Channel 4 is a publicly owned public service broadcaster, funded by commercial means. ITV and Five are commercially funded, privately owned broadcasters with public service remits. As such, in the UK, there is not a pure distinction between commercial and public service broadcasters.

However, in Channel 4's case, a number of rules apply to ensure there is separation between the core public service channel (Channel 4) and the commercial activities that exist to generate revenue to help support the core public service activity. Our commercial ventures are run through 4 Ventures Ltd which is a wholly owned subsidiary of Channel 4 Corporation (C4C). Schedule 9 of the Communications Act requires:

“(a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and

(b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.”

Channel 4 accounts separately for PSB and commercial ventures in accordance with Schedule 9.

In the case of the BBC similar regulations concerning separation and transparency exist between the BBC's core public service activities and the commercial activities of its subsidiaries, such as BBC Worldwide. These are regulated by the BBC Trust under the BBC Fair Trading Commitment.

Channel 4 believes it is appropriate that there should be a form of separation between public service activities and, moreover, transparency of the relationship between the two areas. However, it is also important to recognise that full structural separation may be neither feasible nor desirable, for example where more commercial elements of a channel or range of activities (e.g. entertainment programmes or commercial ventures) are integral to the fulfilment of the public service objectives of the service. The priority should be to ensure that there is sufficient transparency to demonstrate that any public subsidy is proportionate and is being spent efficiently and appropriately through properly accountable systems.

## **2.6. Proportionality test – Exclusion of overcompensation**

## Questions 2.6.1 - 2.6.6

Channel 4 believes that it is appropriate to ensure there is a sufficient degree of transparency around public financing of public service broadcasting, so that it can demonstrate that public expenditure is delivering value for money to the benefit of the public.

However, Channel 4 also believes that it is appropriate that any public funding is granted over a reasonable length of time to allow for financial and programme planning. The current UK PSB settlement is based on providing long term stability of provision, with public services licences granted by Ofcom over many years. In parallel, long term funding is desirable if those objectives are to be met. However, this strengthens the need for those broadcasters in receipt of public funding to be transparent and to operate with financial probity.

Albeit commercially funded, Channel 4 does not exist as a profit generating company. However, Channel 4 maintains cash reserves which are important to the fulfilment of Channel 4's public service mission:

- Reserves are required to manage C4C's working capital requirements as a result of the variances in its cash position.
- Reserves are needed to protect against potential fluctuations in profitability. The majority of Channel 4's costs are largely fixed within a year, but its income is extremely variable. Channel 4 therefore believes it needs to retain significant cash reserves sufficient to enable it to continue to invest in public service output.
- The remaining cash reserves are intended for investment in new business development which will generate new sources of income to compensate for the decline in the income of the core channel.

## **2.7. Proportionality test – exclusion of market distortions not necessary for the fulfilment of the public service mission**

### Questions 2.7.1 – 2.7.4

In the UK, any potentially anti-competitive behaviour of public service broadcasters can be referred variously to the relevant sector regulator (the BBC Trust for the BBC or Ofcom for the commercial public service broadcasters) or to the competition authorities (Ofcom or the Office of Fair Trading). There is no evidence to suggest that these mechanisms are ineffective.

With regard to the specific question of price-undercutting, Channel 4 is not aware of price undercutting being a live issue in the UK. The question about premium sports rights is not an issue relevant to Channel 4, as we are not active in the premium sports rights market.

Channel 4 believes that the priority in reviewing the Communication should be to establish the core principles of proportionality, transparency and accountability at the overarching EU level, whilst seeking also to support plurality of public service content supply through a system that provides flexibility at Member State level in an increasingly complex and challenging digital media world.

## **Sections 2.8 and 3**

Channel 4 has no further comments to add in relation to the questions set out in sections 2.8 or 3.

**Ends**